IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Appeal from Order No. 492 of 2004

Date of decision: 4th September, 2006

A.F.R. (Approved for Reporting)
~~Not Approved for Reporting~~

Date Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 492 of 2004

National Insurance Company Ltd.,
Through its Divisional Manager,
Divisional Office 5/222, Canal Road,
Tikonia, Haldwani, District Nainital. …….. Appellant

Versus

1. Smt. Kiran Purohit W/o Late Sri D.P. Purohit.
2. Km. Nandita, minor D/o Late D.P. Purohit.
   Respondent No. 2 is minor through her legal
   Guardian and mother Smt. Kiran Purohit,
   Both R/o Ashwani Enclave, Lane No. 2,
   House No. 19, Sevla Kala, Dehradun.
3. Chhote Lal S/o Sri Kewal Ram,
   R/o IIP Mohkampur, P.S. Doiwala,
   District Dehradun (Owner Vehicle Truck No. UP07-G-1187).
4. Sri Surendra Pal S/o Sri Dasaundhi Ram,
   R/o Kripa Ram Store, Turner Road,
   P.S. Clement Town, Dehradun,
   (Driver Vehicle No. UP07-G-1187). …… Respondents

Mr. Bindesh Kumar Gupta, Advocate for the appellant.
None for the respondents.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Rajesh Tandon, J.

RAJEEV GUPTA, C. J. (Oral)

This is insurer's appeal against the Award dated 05.10.2004 passed by Motor Accident Claims Tribunal / Addl. District Judge, Dehradun in Motor Accident Claim Case No. 248 of 2003.

2. The claimants, unfortunate mother and sister of deceased Aditya Purohit, claimed compensation of Rs. 15,00,000/- for his death in the motor accident on 12.07.2003 when his motorcycle bearing registration No. UA-07A-5594 was dashed by the offending vehicle Truck bearing registration No. UP-07G-1187 resulting in multiple serious injuries to Aditya Purohit, who succumbed to those injuries on

his way to the hospital. The claimants pleaded that deceased Aditya Purohit used to earn Rs. 3,000/- per month.

3. The owner, driver and insurer of the offending vehicle Truck contested the claim and denied their liability to pay compensation to the claimants on the plea that the motorcyclist himself was responsible for the accident. The insurer took the additional plea that the Truck was being plied in breach of the policy conditions.

4. The claimants examined PW1 Smt. Kiran Purohit, PW2 Vijay Bahadur and PW3 Praveen Kumar in support of their case, whereas the driver, owner and insurer of the offending vehicle Truck did not examine any witness.

5. The Tribunal, on the evidence led by the claimants, held that deceased Aditya Purohit died on account of the injuries sustained by him in the motor accident on 12.07.2003; the accident occurred due to the rash and negligent driving of the driver of the offending vehicle Truck; and the insurer of the offending vehicle Truck was liable to pay compensation to the claimants.

6. Considering the evidence led by the claimants about the income of the deceased, the Tribunal assessed his income at Rs. 3,000/- per month and Rs. 36,000/- per annum. After deducting 1/3rd of the said amount as the personal expenses of the deceased, the claimants' dependency was assessed at Rs. 2,000/- per month and Rs. 24,000/- per annum. By multiplying the annual dependency of Rs. 24,000/- with the multiplier of '17', the compensation was worked out to Rs. 4,32,000/- (There is an apparent calculation mistake in the award . Rs. 24,000/- when multiplied by '17' would come to Rs. 4,08,000/- and not Rs. 4,32,000/- as mentioned in the Award). The Tribunal awarded further sums of Rs. 5,000/- towards Funeral Expenses; Rs. 50,000/- for Loss of Love & Affection; and Rs. 50,000/- for Loss of Dependency. Thus, a total sum of Rs. 5,37,000/- was worked out

as compensation payable to the claimants, which was rounded-off to Rs. 5,40,000/-. The Tribunal, further, directed payment of interest on the amount of the compensation at the rate of 6% per annum from the date of the claim petition.

7. Mr. Bindesh Kumar Gupta, the learned counsel for the appellant Insurance Company submitted that as the appellant Insurance Company was granted permission under Section 170 of the Motor Vehicles Act, the quantum of compensation is being challenged in this appeal. The learned counsel submitted that the Tribunal has erred in selecting the higher multiplier of '17'; in awarding the sum of Rs. 50,000/- for Loss of Love & Affection; and another sum of Rs. 50,000/- for Loss of Dependency, which are not awardable at all.

8. The findings recorded by the Tribunal that deceased Aditya Purohit died on account of the injuries sustained by him in the motor accident on 12.07.2003 and that the driver of the offending vehicle Truck was responsible for the accident are based on eye-witness account of PW2 Vijay Bahadur. On a close scrutiny of the evidence of PW2 Vijay Bahadur, we are satisfied that the Tribunal has rightly relied upon his evidence in recording the above findings. We, therefore, affirm the findings recorded by the Tribunal in that behalf.

9. Similarly, the income of the deceased has been rightly assessed by the Tribunal at Rs. 3,000/- per month on the evidence of PW3 Praveen Kumar, who has categorically stated that a sum of Rs. 3,000/- per month was being paid as salary to deceased Aditya Purohit. We, therefore, do not find any infirmity in the assessment of income of the deceased by the Tribunal at Rs. 3,000/- per month.

10. The claimants' dependency, too, has been rightly assessed by the Tribunal at Rs. 2,000/- per month and Rs. 24,000/- per annum after deducting 1/3rd of the income of the deceased of Rs. 3,000/- per

month and Rs. 36,000/- per annum as his personal expenses. We, therefore, affirm the assessment of the income of the deceased at Rs. 3,000/- per month and Rs. 36,000/- per annum and the claimants' dependency at Rs. 2,000/- per month and Rs. 24,000/- per annum.

11. The selection of multiplier of '17' by the Tribunal has been challenged by the appellant Insurance Company on the basis of the dictum of the Apex Court in the case of **Municipal Corporation of Greater Bombay Vs. Laxman Iyer and another** reported in **(2003)8 SCC 731.** The learned counsel for the appellant Insurance Company vehemently argued that the Tribunal has erred in selecting the multiplier of '17', as the Apex Court in the case of Laxman Iyer (supra) has held that, in those cases where the claimants are parents of the deceased, the multiplier should not be more than '10'.

12. For a better appreciation of the above submission of the learned counsel for the appellant Insurance Company, we deem it necessary to reproduce para 12 of the Apex Court judgment in the case of Laxman Iyer (supra), which reads as follows:

> "12. Keeping in view the observations made by this Court in various cases, several other factors need to be taken note of. The deceased was unmarried. The contribution to the parents who had their separate earnings being employed and educated has relevance. The possibility of reduction in contribution once a person gets married is a reality. The compensation is relatable to the loss of contribution or the pecuniary benefits. The multiplier adopted by the Tribunal and confirmed by the High Court is certainly on the higher side. Considering the age of the claimants, it can never exceed 10 even by amount comes to Rs. 3.6 lakhs at the monthly expected income fixed by the Tribunal and confirmed by the High Court. Looking into the nature of the contributory negligence of the deceased after making an appropriate deduction which can reasonably be fixed at 25%, the compensation amount payable by the Corporation can be fixed at rupees three lakhs including the amount awarded by the Tribunal and confirmed by the High Court for loss

> of expectation of life. Interest at the rate as awarded by the High Court is maintained from the date of application for compensation."

13. From the above-quoted para 12 of the Apex Court judgment in the case of Laxman Iyer (supra), it is apparent that as the father of the deceased, in that case, was employed and had his own earnings, the Apex Court held that the multiplier of '10' was appropriate in that case. In the present case, the claimants are widowed mother and unmarried sister of deceased Aditya Purohit. From the narration in the claim petition, it is apparent that father of deceased Aditya Purohit had died much before the accident. There is no material to even suggest that either the widowed mother of the deceased or his unmarried sister was employed anywhere or had any income at all. Thus, it is established that both the claimants were entirely dependent on the income of deceased Aditya Purohit. It is also apparent that claimant No. 2 Km. Nandita, who was aged about 17 years on the date of the accident i.e. 12.07.2003, would be married in due course and substantial amount would be required for performing her marriage. If deceased Aditya Purohit would not have met an untimely death in the motor accident, he would have discharged the above responsibility of performing the marriage of his unmarried sister. As claimant No. 1 Smt. Kiran Purohit, who was 44 years of age on the date of the accident, had no source of income for her maintenance, she was wholly dependent on the income of her son deceased Aditya Purohit. Since the Tribunal has recorded a finding that the income of the deceased, at the time of the accident, was Rs. 3,000/- per month and the claimants' dependency has been assessed at Rs. 2,000/- per month, the compensation to be awarded to the claimants, at least, should be such amount, which, if deposited in a Fixed Deposit with a nationalised bank, can fetch Rs. 24,000/- per annum as interest. The amount of compensation of Rs. 4,08,000/- assessed by the Tribunal by multiplying the annual dependency of Rs. 24,000/- with the multiplier of '17', when deposited in a Fixed Deposit with a nationalised bank would fetch, at the prevalent rate of interest of 6% per annum, a sum

of Rs. 24,480/- per annum, which is almost similar to the dependency of the claimants assessed by the Tribunal at Rs. 24,000/- per annum. We, therefore, do not find any good ground for interference on the question of multiplier selected by the Tribunal.

14. That apart, in a motor accident claim case, what is important is that the compensation to be awarded by the Tribunal/Court should be just and proper compensation in the facts and circumstances of the case. The Apex Court, in the case of **T.N. State Transport Corpn. Ltd. Vs. S. Rajapriya and others** reported in **(2005) 6 Supreme Court Cases 236,** observed in paras 8 to 10:

> "8. The assessment of damages to compensate the dependents is beset with difficulties because from the nature of things, it has to take into account many imponderables e.g. the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income together.
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> 9. The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalised by multiplying it by a figure representing the proper number of years' purchase.
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> 10. Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case "it is the overall picture that matters", and the court must try to assess as best as it can the loss suffered."

15. Thus, seen from any angle, the compensation of Rs. 4,08,000/-, assessed by the Tribunal after multiplying the annual dependency of Rs. 24,000/- with the multiplier of '17', appears to be just and proper compensation in the case. The sum of Rs. 5,000/- awarded by the Tribunal towards Funeral Expenses, also does not call for any interference. Thus, the claimants are entitled to a total sum of Rs. 4,13,000/- as compensation for the death of Aditya Purohit in the motor accident.

16. The sum of Rs. 50,000/- awarded by the Tribunal under the head of Loss of Love & Affection and another sum of Rs. 50,000/- towards Loss of Dependency are not awardable at all. The grant made by the Tribunal in that behalf, therefore, is liable to be set aside and is hereby set aside.

17. The interest awarded by the Tribunal at the rate of 6% per annum from the date of the application cannot be said to be unreasonable and, therefore, does not call any interference.

18. For the foregoing reasons, the appeal filed by the appellant Insurance Company against the Award dated 05.10.2004 is allowed in part. The compensation of Rs. 5,40,000/- awarded by the Tribunal is modified to Rs. 4,13,000/-.

19. No order as to costs.

(Rajesh Tandon, J.) 04.09.2006

(Rajeev Gupta, C. J.) 04.09.2006

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